IN THE

Supreme Court of the United States

October Term, 1947

No. 304

THE BROWN INSTRUMENT COMPANY,
Petitioner,

vs.

SAM B. WARNER, Register of Copyrights,
Respondent.

REPLY BRIEF OF PETITIONER IN SUPPORT OF ITS PETITION FOR WRIT OF CERTIORARI.

SAMUEL E. DARBY, JR.,
Counsel for Petitioner.

C. D. SPANGENBERG,
E. H. PARRY, JR.,
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It is believed that the following few facts, crystalized by the brief for respondent in opposition to the petition for writ of certiorari, inevitably should induce this Court to grant the petition.

1. Respondent's brief expressly concedes (p. 3) that the printed matter on petitioner's charts

> "are based on mathematical or scientific calculations, and it may be possible for one skilled in the art to deduce with more or less accuracy the data or specifications upon which they are based."

2. Respondent's brief does not deny (and in fact it was proven by Plaintiff's Exhibit 1; see p. 3, par. 6 of the petition) that since as least as early as 1901 the Register of Copyrights has granted registrations for the printed matter on charts, such as those of petitioners involved in this case,

in open recognition of the fact that they constituted graphic illustrations of mathematical computations which, by the Act, were made copyrightable.

3. Respondent's brief admits (p. 4) that since 1928 the Register of Copyrights had continuously granted petitioner copyright registrations of such printed matter on petitioner's charts; and does not deny (as indeed it could not) that many thousands of such registrations issued to petitioner and other calculators and designers of such charts, and are unexpired.

4. Respondent crystalizes its theory of the case (as well as the basis for the decision by the Court of Appeals below) as an expressed fear that petitioner is seeking to obtain a *monopoly* by copyright which it could not obtain by patent grant. The fallacy of this fear, as well as of the thought upon which it is based, is the fact (which respondent and the Court below completely overlooked) that petitioner is *not* seeking to obtain a copyright on *a piece of paper* which may constitute an element of a patented or patentable mechanical combination, according to its size, shape thickness or other dimensional characteristics, but, to the contrary, petitioner is seeking copyright for *the printed matter* on its charts regardless of size, shape, thickness or other dimensional characteristics. It is believed to be too obvious to warrant further comment that *the printed matter* on the chart in no way is or can be an element of a mechanical combination. It is believed to be equally as obvious that when the printed matter constitutes a graphic illustration of scientific calculation or mathematical computation—universally heretofore recognized as copyrightable under the Act,—the necessity for review by this Court of the startling and revolutionary decision of the Court of Appeals below becomes evident. Moreover, there is no question of *monopoly* involved in copyrights. *Copying, alone, is offensive.*

5. The only decision of this Court relied upon by respondent (*Baker* v. *Seldon*, 101 U. S. 99), for reasons which at once are apparent upon the reading thereof, is wholly inapplicable to the facts of this case. Again, we earnestly assert that this Court has never passed upon the question here presented; that the question is one of vast and far reaching public importance; that the decision of the Court of Appeals below is revolutionary in character, and, as expressly conceded by respondent (p. 4), constitutes *a reversal by the Register of Copyrights of its policy for nearly fifty years*, thereby throwing a cloud on the validity of thousands of registrations still alive which, in good faith, were applied for and were granted by the predecessors of the present Register.

In view of the foregoing it is earnestly urged that the petition for writ of certiorari be granted.

Respectfully submitted,

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